

## LIABILITY OF CERTAIN PERSONS FOR EMERGENCY CARE (EXCERPT)

Act 17 of 1963

### 691.1501 Physicians, physician's assistant, or nurses rendering emergency care or determining fitness to engage in competitive sports; liability for acts or omissions; definitions.

Sec. 1. (1) A physician, physician's assistant, registered professional nurse, or licensed practical nurse who ~~in good faith renders emergency care without compensation at the scene of an emergency, as a~~ physician-patient relationship, physician's assistant-patient relationship, registered professional nurse-patient relationship, or licensed practical nurse-patient relationship did not exist before the emergency, is not liable for civil damages as a result of acts or omissions by the physician, physician's assistant, registered professional nurse, or licensed practical nurse in rendering the emergency care, ~~except acts or omissions amounting to gross negligence or willful and wanton misconduct.~~

(2) A physician or physician's assistant who ~~in good faith performs a physical examination without compensation upon an individual to determine the individual's fitness to engage in competitive sports and who has obtained a form described in this subsection signed by the individual or, if the individual is a minor, by the parent or guardian of the minor, is not liable for civil damages as a result of acts or omissions by the~~ physician or physician's assistant in performing the physical examination, ~~except acts or omissions amounting to gross negligence or willful and wanton misconduct or which are outside the scope of the license held by the~~ physician or physician's assistant. The form required by this subsection shall contain a statement indicating that the person signing the form knows that the physician or physician's assistant is not necessarily performing a complete physical examination and is not liable under this section for civil damages as a result of acts or omissions by the physician or physician's assistant in performing the physical examination, except acts or omissions amounting to gross negligence or willful and wanton misconduct or which are outside the scope of the license held by the physician or physician's assistant.

(3) A physician, physician's assistant, registered professional nurse, or licensed practical nurse who ~~in good faith renders emergency care without compensation to an individual requiring emergency care as a result of having engaged in competitive sports is not liable for civil damages as a result of acts or omissions by the~~ physician, physician's assistant, registered professional nurse, or licensed practical nurse in rendering the emergency care, except acts or omissions amounting to gross negligence or willful and wanton misconduct and except acts or omissions that are outside the scope of the license held by the physician, physician's assistant, registered professional nurse, or licensed practical nurse. This subsection applies to the rendering of emergency care to a minor even if the physician, physician's assistant, registered professional nurse, or licensed practical nurse does not obtain the consent of the parent or guardian of the minor before the emergency care is rendered.

(4) As used in this act:

(a) "Competitive sports" means sports conducted as part of a program sponsored by a public or private school that provides instruction in grades kindergarten through 12 or a charitable or volunteer organization. Competitive sports do not include sports conducted as part of a program sponsored by a public or private college or university.

(b) "Licensed practical nurse" means an individual licensed to engage in the practice of nursing as a licensed practical nurse under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(c) "Physician" means an individual licensed to engage in the practice of medicine or the practice of osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(d) "Physician's assistant" means an individual licensed to engage in the practice of medicine or the practice of osteopathic medicine and surgery performed under the supervision of a physician as provided in article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(e) "Registered professional nurse" means an individual licensed to engage in the practice of nursing under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

History: Add. 1975, Act 123, Imd. Eff. July 1, 1975;— Am. 2002, Act 543, Imd. Eff. July 26, 2002.

Compiler's note: Enacting section 1 of Act 543 of 2002 provides:

"Enacting section 1. This amendatory act applies to a cause of action arising on or after the effective date of this amendatory act."

## **“Gross Negligence” standard in Michigan**

*Requiring criminal intent to hold bad actors accountable.*

**Impossible standard.** The previous, activist Michigan Supreme Court’s interpretation of the term “gross negligence” created a nearly impossible criminal-law hurdle injured parties need to overcome to hold wrongdoers accountable.

**Gross negligence now requires *intent*, like committing a crime.** The original definition of gross negligence as listed in the governmental immunity statute defines it as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” This definition was intended to limit liability for defendants whose actions showed even a below average amount of caution, but not so little as to appear reckless or careless.

However, the Supreme Court created a much different definition of the term “gross negligence” which requires “***almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks. It is as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety or welfare of those in his charge.***” [*Tarlea v Crabtree*, 263 Mich App 80, 90 (2004), lv den, 472 Mich 891 (2005).]

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### **Michigan Civil Jury Instructions**

#### **M Civ JI 14.10 Gross Negligence—Definition**

**Gross negligence means conduct or a failure to act that is so reckless that it demonstrates a substantial lack of concern for whether an injury will result.**

#### **M Civ JI 14.11 Wanton Misconduct—Definition**

**Wanton misconduct means conduct or a failure to act that shows such indifference to whether harm will result as to be equal to a willingness that harm will result.**

#### **M Civ JI 14.12 Willful Misconduct—Definition**

**Willful misconduct means conduct or a failure to act that was intended to harm the plaintiff.**